

**STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

**DEPT. OF FINANCIAL INSTITUTIONS,
COMPLIANCE DIVISION,**

Petitioner,

v.

DISCOUNT CHECK ADVANCE, LLC

Respondent.

TDFI No.: 07-110-C

INITIAL ORDER

This matter came before the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner") upon Motion of the Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Petitioner"). The Commissioner is vested with jurisdiction to hear this case pursuant to Tenn. Code Ann. § 45-1-105 and the Deferred Presentment Services Act, as amended, at Tenn. Code Ann. §§ 45-17-101, *et seq.* (hereinafter, "DP Act"). This case was adjudicated according to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, and the Department of Financial Institution's Rules of Procedure for Contested Cases, Tenn. Comp. R. and Regs. 0180-6, *et seq.*

Discount Check Advance, LLC (hereinafter, "Respondent") failed to timely request a hearing on the charges raised in the Notice of Charges and no hearing was held. The Petitioner, by its Motion, has requested that the Commissioner deem the Petitioner's Requests for Admission admitted as a matter of law and issue an order granting the maximum relief requested in the Notice of Charges. In its Notice of Charges, the

Petitioner requests that the Commissioner issue an order directing the Respondent to: (1) to refund any and all fees collected in violation of the DP Act; (2) to cease and desist from performing further unlicensed deferred presentment services; and, (3) to pay a civil penalty of up to twelve thousand dollars (\$12,000).

After consideration of the record, it is **DETERMINED** that the Petitioner's Requests for Admission **SHOULD** be admitted as a matter of law and that the relief requested in the Notice of Charges **SHOULD** be granted. Said decision is based on the Preliminary Rulings, Findings of Fact, and Conclusions of Law stated below.

I. RECORD

The record in this case consists of the following:

1. Petitioner's Notice of Opportunity for a Hearing and of the Rights of the Respondent
2. Petitioner's Notice of Charges
3. Petitioner's Requests for Admission
4. Petitioner's Motion to Have the Requests for Admission Deemed Admitted as a Matter of Law and for an Order Granting the Relief Requested in the Notice of Charges

II. PRELIMINARY RULINGS

In accordance with Tenn. R. Civ. P. 36.01, State Rule, Tenn. Comp. R. and Regs. 0180-6-18(1), and because the Petitioner served the Respondent with Requests for Admission requesting the truth of relevant matters set forth therein, and because the Petitioner designated within the Requests for Admission a period of thirty (30) days for the Respondent to serve the Petitioner with a written answer or objection to each relevant matter set forth therein, and because the Respondent failed to serve the Petitioner with any such response within the time period so designated, the Petitioner's Requests for

Admission are admitted as a matter of law. The following Findings of Fact are based solely on said admitted Requests for Admission.

III. FINDINGS OF FACT

1. On January 9, 2008, the Respondent was served with a “Notice of Opportunity for a Hearing and the Rights of the Respondent” and a “Notice of Charges” in the above-captioned case.

2. The “Notice of Charges” informed the Respondent of the allegations against it and the “Notice of Opportunity for a Hearing and the Rights of the Respondent” informed the Respondent and that it could contest said allegations by first filing a written request for a hearing with the Commissioner, provided that said request be filed within thirty (30) days of notice.

3. The Respondent failed to file a written request for a hearing with the Commissioner within thirty (30) days of January 9, 2008.

4. The Respondent is a for-profit Tennessee Limited Liability Company whose principal office is located at 3403 Nolensville Rd., Nashville, Tennessee 37211.

5. The Respondent maintains a location for conducting business at 104 S. Gallatin Pike Rd., Madison, Tennessee 37115 (hereinafter, “Madison Location”).

6. On or about October 28, 2005, the Department issued the Respondent a license numbered 3111 (hereinafter, “License”) to operate a deferred presentment services business at the Madison Location, as provided in the DP Act.

7. The License expired on September 30, 2007 after the Respondent failed to timely file an application to renew it pursuant to Tenn. Code Ann. § 45-17-110.

8. On or about October 8, 2007, the Petitioner had an examiner by the name

of Calvin Stout (hereinafter, "Stout") complete a compliance examination (hereinafter, "Examination 1") at the Madison Location, pursuant to Tenn. Code Ann. § 45-17-111.

9. As of the date of Examination 1, the Respondent had not yet filed an application under the DP Act to re-license its Madison Location.

10. Pursuant to Examination 1, Stout discovered and made copies of several of the Respondent's records including a document titled "Check Listing Report," deferred presentment customer agreements, copies of checks that were held and cashed, and customer receipts.

11. The "Check Listing Report" referenced in paragraph ten (10), above, details several deferred presentment transactions conducted on or after October 1, 2007.

12. On or about November 29, 2007, the Petitioner had a second examiner by the name of Michael Wiggins (hereinafter, "Wiggins") complete a follow-up examination (hereinafter, "Examination 2") at the Madison Location.

13. As of the date of Examination 2, the Respondent had still not filed an application under the DP Act to re-license its Madison Location.

14. Pursuant to Examination 2, Wiggins collected and made copies of additional "Check Listing Reports," deferred presentment agreements, copies of checks that were held and cashed relative to said agreements, and customer receipts for those agreements.

15. The Respondent's records that were collected and reviewed by the Petitioner in conjunction with Examination 1 and Examination 2 show that the Respondent conducted at least twelve (12) deferred presentment transactions for a fee on or after October 1, 2007 from the Madison Location.

16. On October 1, 2007, the Respondent engaged in transaction number 1003631 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

17. On October 2, 2007, the Respondent engaged in a transaction with a customer with the initials S.H., whereby the Respondent accepted the customer's check in the amount of twenty dollars (\$20.00) for deferred presentment purposes, in return for a fee of two dollars and fifty cents (\$2.50).

18. On October 2, 2007, the Respondent engaged in transaction number 1003633 whereby it accepted a customer's check in the amount of fifty dollars (\$50.00) for deferred presentment purposes, in return for a fee of six dollars and twenty-five cents (\$6.25).

19. On October 2, 2007, the Respondent engaged in transaction number 1003634 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

20. On October 3, 2007, the Respondent engaged in transaction number 1003636 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

21. On October 4, 2007, the Respondent engaged in transaction number 1003637 whereby it accepted a customer's check in the amount of one hundred dollars (\$100.00) for deferred presentment purposes, in return for a fee of twelve dollars and fifty

cents (\$12.50).

22. On October 5, 2007, the Respondent engaged in transaction number 1003638 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

23. On October 5, 2007, the Respondent engaged in transaction number 1003639 whereby it accepted a customer's check in the amount of one hundred and fifty dollars (\$150.00) for deferred presentment purposes, in return for a fee of eighteen dollars and seventy-five cents (\$18.75).

24. On October 5, 2007, the Respondent engaged in transaction number 1003640 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

25. On October 5, 2007, the Respondent engaged in transaction number 1003641 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

26. On October 5, 2007, the Respondent engaged in transaction number 1003642 whereby it accepted a customer's check in the amount of two hundred dollars (\$200.00) for deferred presentment purposes, in return for a fee of twenty-five dollars (\$25.00).

27. On October 6, 2007, the Respondent engaged in transaction number 1003643 whereby it accepted a customer's check in the amount of one hundred and fifty

dollars (\$150.00) for deferred presentment purposes, in return for a fee of eighteen dollars and seventy-five cents (\$18.75).

28. Based on the twelve (12) transactions referenced in paragraphs sixteen (16) through twenty-seven (27), above, the Respondent collected two hundred and thirty-three dollars and seventy-five cents (\$233.75) in deferred presentment fees from the Madison Location while said location was not licensed by the Department to conduct deferred presentment business.

29. On or about October 26, 2007, Stephen Henley, a Director of Licensing for the Petitioner, mailed the Respondent a letter notifying it that because it had failed to submit a renewal fee and renewal application by September 1, the License had expired on September 30.

30. Said letter also notified the Respondent that it would be subject to administrative action by the Department for any deferred presentment business conducted after expiration of the License.

31. Tenn. Code Ann. § 45-17-103 provides that “No person shall engage in the business of deferred presentment services without having first obtained a license [under the DP Act],” and that “A separate license shall be required for each location from which such business is conducted.”

32. Tenn. Code Ann. § 45-17-110 provides that a license issued under the DP Act shall expire on the following September 30, but that said license may be renewed “upon application by the license holder showing continued compliance with the requirements of § 45-17-104 and the payment to the commissioner annually, on or before September 1 of each year, a license renewal fee of five hundred dollars (\$500).”

33. Based on the twelve (12) transactions referenced in paragraphs sixteen (16) through twenty-seven (27), above, the Commissioner has grounds pursuant to Tenn. Code Ann. § 45-17-115 to order the Respondent to: (1) refund the two hundred and thirty-three dollars and seventy-five cents (\$233.75) in fees that it collected; (2) cease and desist from committing further violations of the DP Act; and, to (3) pay a civil penalty of up to twelve thousand dollars (\$12,000).

IV. CONCLUSIONS OF LAW

34. Regarding licensing requirements, Tenn. Code Ann. § 45-17-103 provides that “No person shall engage in the business of deferred presentment services without having first obtained a license [under the DP Act],” and that “A separate license shall be required for each location from which such business is conducted.” Tenn. Code Ann. § 45-17-110 provides that a license issued under the DP Act shall expire on the following September 30, but that said license may be renewed “upon application by the license holder showing continued compliance with the requirements of § 45-17-104 and the payment to the commissioner annually, on or before September 1 of each year, a license renewal fee of five hundred dollars (\$500).”

35. The Findings of Fact set forth above clearly show by a preponderance of the evidence that the Respondent violated Tenn. Code Ann. § 45-17-103 on at least twelve (12) separate occasions by conducting deferred presentment transactions for a fee from a location that was not licensed by the Department to engage in the business of providing deferred presentment services. The Respondent allowed its license for said location to lapse on September 30, 2007 by not timely filing a renewal application, and it also did not thereafter file any other application for a license prior to conducting the

twelve (12) transactions at issue. All fees collected by the Respondent from the Madison Location while said location was not licensed by the Department were collected in violation of the DP Act.

36. Tenn. Code Ann. § 45-17-115 provides that, if after notice and opportunity for a hearing, the Commissioner finds that a person has violated the DP Act or any regulations issued pursuant thereto, the Commissioner may:

- (1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant thereto;
- (2) Require the refund of any fees collected by such person in violation of this chapter; and/or
- (3) Order the person to pay to the commissioner a civil penalty of not more than one thousand dollars (\$1,000) for each transaction in violation of this chapter or each day that a violation has occurred and continues.

37. Therefore, because the Findings of Fact are sufficient to establish by a preponderance of the evidence that the Respondent has committed the violations of the DP Act stated herein, the Commissioner **SHOULD** issue an Order directing the Respondent: (1) to refund any and all fees collected in violation of the DP Act; (2) to cease and desist from performing further unlicensed deferred presentment services; and, (3) to pay a civil penalty of up to twelve thousand dollars (\$12,000).

V. ORDER

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Respondent, Discount Check Advance, LLC, shall: (1) refund any and all fees collected in violation of the DP Act; (2) cease and desist from performing further unlicensed deferred presentment services; and, (3) pay a civil penalty of twelve thousand dollars (\$12,000).

This Order is an Initial Order that shall become a Final Order in accordance with Tenn. Code Ann. 4-5-318(f)(3) unless, within fifteen (15) days after entry of this Order, the Respondent follows the appeal procedures outlined in Appendix A, which is attached to this Order.

This Initial Order entered and effective this 5th day of May, 2008.

Marsha P. Anderson
Commissioner of the TDFI, or
Designee Acting as Hearing Officer

APPENDIX A TO INITIAL ORDER

Review of Initial Order

This Initial Order shall become a Final Order, without further notice, fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) Either party files a written Petition for Appeal (see Tenn. Code Ann. § 4-5-315) with the Commissioner, stating the specific reasons why the Initial Order was incorrect, within fifteen (15) days after the entry date of the Initial Order. If this action occurs, no Final Order will be issued until the Petition for Appeal is reviewed and disposed of. A Petition for Appeal must be addressed to "Commissioner Greg Gonzales" and filed at the following address:

Tennessee Dept. of Financial Institutions
Suite 400, Fourth Floor
Nashville City Center, 511 Union Street
Nashville, Tennessee 37219
Fax: (615) 253-6306

(2) Either party files a Petition for Reconsideration of the Initial Order (see Tenn. Code Ann. § 4-5-317) with the Hearing Officer, stating the specific reasons why the Initial Order was incorrect, within fifteen (15) days after the entry date of the Initial Order. A Petition for Reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of a Petition for Appeal (as set forth above) starts to run from the entry date of an Order disposing of a Petition for Reconsideration, or from the twentieth day after the filing of the Petition for Reconsideration if no action is taken. Any such Petition for Reconsideration must be addressed to "Hearing Officer/Legal Division," and filed at the address above.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, either party may file a Petition for Reconsideration of the Final Order (see Tenn. Code Ann. § 4-5-317), stating the specific reasons why the Final Order was incorrect. Any such Petition must be addressed to "Hearing Officer/Legal Division," and filed at the address above. If no action is taken within twenty (20) days of filing the Petition, it is deemed denied.

Either party may petition the Commissioner for a Stay of the Initial or Final Order within seven (7) days after the entry date of the Order (see Tenn. Code Ann. § 4-5-316).

A person who is aggrieved by a Final Order may seek judicial review by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County), within sixty (60) days after the entry date of the Final Order (see Tenn. Code Ann. § 4-5-322). If granted, filing a Petition for Reconsideration will toll the sixty (60) day period.

CERTIFICATE OF SERVICE

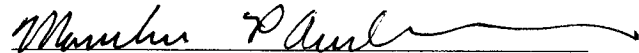
I hereby certify that, on the 5th day of May, 2008, a true and correct copy of the foregoing "Initial Order" and its "Appendix A" was deposited with the United States Postal Service ("USPS") to be served via USPS certified mail, return receipt requested, as follows:

Receipt number 7007 1490 0004 1088 3000:

Discount Check Advance, LLC
c/o Roberta "Bobbie" Swagger, Registered Agent
104 S. Gallatin Pike
Madison, Tennessee 37115

Receipt number 7007 1490 0004 1088 2997:

Derek Church, Staff Attorney
Tennessee Department of Financial Institutions
4th Floor, Nashville City Center
511 Union Street
Nashville, Tennessee 37219


Matthew Paul